



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 6, 2003

Mr. James L. Hall
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2003-0073

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174551.

The Texas Department of Criminal Justice (the "department") received two requests for "the application for the selected applicant, all interview documentation, including but not limited to questions, responses, rationale and criteria for rationale" related to Job Posting No. 05113982. You claim that a portion of the requested information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note you have not submitted information concerning the requested application, rationale, and criteria for rationale, nor have you indicated that you seek to withhold any such information; therefore, if such information exists, we assume you have already released it to the requestors. If you have not released this information, you must release it to the requestors at this time. See Gov't Code §§ 552.301(a), .302.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's or applicant's overall job performance or suitability. Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *Id.* at 8. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6.

Having reviewed the submitted questions you seek to withhold, we conclude that question numbers 1-3 and 5 for the "Parole Officer IV / Parole Supervisor" position are "test items" as contemplated by section 552.122(b). Therefore, you may withhold these questions and their model and actual answers under section 552.122(b). However, we find that question 4 does not test an individual's or group's knowledge or ability in a particular area, and must be released to the requestors in this instance, along with its corresponding model and actual answers.

You also raise section 552.117(3) of the Government Code, which excepts from disclosure the home address, home telephone number, and social security number of an employee of the department, as well as any information that reveals whether an employee of the department has family members, regardless of whether the employee complies with section 552.1175. *See* Gov't Code § 552.117(3). In releasing the responsive information, the department must withhold from disclosure the social security numbers of departmental employees based on section 552.117(3).

Finally, we note that the submitted documents contain the requestors' social security numbers. Social security numbers may not be subject to release to the public in some circumstances. *See* Gov't Code §§ 552.101, 552.117; Open Records Decision No. 622 (1994). However, each of the requestors in this instance has a special right of access to his own information. Gov't Code § 552.023. Because this information may be confidential with respect to the general public, if the department receives a request for this information from an individual other than the person whom the information concerns, the department should again seek our decision.

In summary, the department may withhold the submitted questions 1-3 and 5, along with their corresponding model and actual applicant answers based on section 552.122(b) of the Government Code. The department must withhold the submitted social security numbers belonging to department employees based on section 552.117(3), except that each of the requestors in this instance has a special right of access to his own information. The remaining information must be released to the requestors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 174551

Enc. Submitted documents

c: Mr. Anthony Phillips
5104 Edenborough Lane
Austin, Texas 78754
(w/o enclosures)

Mr. Ferdinand M. Nwagbo
1616 Headway Circle
Austin, Texas 78754
(w/o enclosures)